

Hong Kong Starts Accepting SPAC Applications on January 1, 2022

On 17 December 2020, the Stock Exchange of Hong Kong (“HKEX”) published its conclusions to the consultation paper on the new listing regime for Special Purpose Acquisition Companies (“SPACs”).

The HKEX will start accepting listing applications from SPACs pursuant to this new SPAC regime under the new Chapter 18B (the “Hong Kong SPAC Regime”), which will take effect on 1 January 2022.

Key features of the Hong Kong SPAC regime, along with the differences between the Hong Kong SPAC regime and the U.S. SPAC regime, are set out below:

	HKEX CONCLUSIONS	CHANGES FROM THE CONSULTATION PAPER	THE UNITED STATES
Open Market Requirements	<p>The subscription and trading of a SPAC’s securities will be restricted to Professional Investors only. A SPAC must distribute each of SPAC shares and SPAC warrants to a minimum of 75 Professional Investors, of which 20 must be institutional professional investors.¹</p> <p>On the other hand, the trading of the shares of the new combined company after the de-SPAC transaction (the “Successor Company”) is open to all investor types.</p>	<p>The HKEX lowered the minimum number of institutional professional investors from 30 to 20.</p>	<p>The trading of a SPAC’s securities in the offering is open to both professional and retail investors.</p>

1. Rule 18B.05, IV-5; para 47, p. 13.

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SPAC Promoter	At least one SPAC Promoter must be a firm that holds a Type 6/Type 9 license issued by the Securities and Futures Commission (SFC); a waiver of the licensing requirement may be granted on a case-by-case basis. The firm must also hold at least 10% of the Promoter Shares. ²	The HKEX may consider granting waiver on a case-by-case basis of the SFC licensing requirement for the SPAC Promoter. ³	The SPAC promoters have the flexibility to determine whether to hold promoter shares or not, and the allocation of promoter shares. ⁴												
SPAC Directors	The SPAC's board must consist of at least two Type 6 or Type 9 SFC-licensed individuals, one of whom must be a director representing the SFC-licensed SPAC Promoter. ⁵	The HKEX removed the original requirement that a majority of the SPAC's board be representatives of the SPAC Promoters who nominate them.	No equivalent requirement.												
Mandatory PIPE Investment	Staggered thresholds for the minimum independent PIPE investment are adopted for de-SPAC targets of different sizes: ⁶ <table border="1" data-bbox="349 865 774 1249"> <thead> <tr> <th>NV (HK\$ bn)</th> <th>Minimum</th> </tr> </thead> <tbody> <tr> <td><2</td> <td>25%</td> </tr> <tr> <td>2-5</td> <td>15%</td> </tr> <tr> <td>5-7</td> <td>10%</td> </tr> <tr> <td>=> 7</td> <td>7.5%</td> </tr> <tr> <td>> 10</td> <td>Waiver to be considered on a case-by-case basis</td> </tr> </tbody> </table>	NV (HK\$ bn)	Minimum	<2	25%	2-5	15%	5-7	10%	=> 7	7.5%	> 10	Waiver to be considered on a case-by-case basis	The HKEX removed a blanket requirement that outside independent PIPE investment constitute at least 25% of the market capitalization of the Successor Company.	No requirement to obtain PIPE investments of any particular size, although as a matter of business practice, PIPE financings are common to validate the proposed enterprise value of a target. ⁷
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2. Rule 18B.11, IV-7.

3. Rule 18B.10, IV-7, note 2.

4. Para 112, p. 23.

5. Rule 18B.12, IV-8; para 147, p 28.

6. Rule 18B.41, IV-16.

7. Consultation para 291, p 66.

	HKEX CONCLUSIONS	CHANGES FROM THE CONSULTATION PAPER	THE UNITED STATES
Sophisticated PIPE Investment	At least one independent PIPE investor must be an asset management firm or fund with assets under management of at least HK\$1 billion. At least 50% of the independent PIPE investment must be contributed by at least three sophisticated investors. ⁸	There is no longer a requirement that one single PIPE investor take up 5% of the shares of the Successor Company.	No equivalent requirement.
Fund Raising Size	The funds expected to be raised by a SPAC from its initial offering must be at least HK\$1 billion. ⁹	Adopted.	No equivalent requirement.
Funds Held in Trust	A SPAC should ring-fence 100% of funds raised from its initial offering in an escrow account. ¹⁰	Adopted.	All net SPAC IPO proceeds are required to be held in a trust account held by an insured depository institution. ¹¹
Warrant Dilution	Warrants issued by the SPAC should not exceed 50% of the number of shares ¹² (including promoter shares) in issue. ¹³	The HKEX raised the warrant cap from 30% to 50%.	No equivalent requirement.
Minimum Market Capitalisation of the de-SPAC Target	The de-SPAC target should have a market capitalization that is higher than HK\$500 million. ¹⁴	Adopted.	A SPAC is required to have a minimum market capitalization of US\$40 million (HK\$311.5 million) on the Nasdaq (Global Market) and US\$15 million (HK\$117 million) on the New York Stock Exchange (“ NYSE ”).
Size of de-SPAC Targets	The de-SPAC target should have a fair market value of at least 80% of the funds raised from the SPAC’s initial offering. ¹⁵	Adopted.	The fair market value of the de-SPAC target is required to represent at least 80% of the proceeds raised by the SPAC from its initial offering held in trust.

8. Rule 18B.05, IV-5; para 248, p. 46.

9. Para 74, p.17.

10. Rule 18B.16, IV-8.

11. <https://www.sec.gov/oiea/investor-alerts-and-bulletins/what-you-need-know-about-spacs-investor-bulletin>

12. Para 277, p.50.

13. Rule 18B.23, IV-10.

14. Para 214, p 40.

15. Rule 18B.39, IV-15.

	HKEX CONCLUSIONS	CHANGES FROM THE CONSULTATION PAPER	THE UNITED STATES
Deadlines	The SPAC must publish a de-SPAC announcement within 24 months (the “ de-SPAC Announcement Deadline ”) and complete a de-SPAC transaction within 36 months (the “ de-SPAC Transaction Deadline ”) of the date of its listing. ¹⁶	Adopted	A SPAC must consummate a de-SPAC, or business combination, transaction within 36 months of its IPO without further extension. However, many U.S.-listed SPACs contractually set a shorter deadline of 24 months or less.
Eligibility of de-SPAC Targets	An “ Investment Company ” as defined under Chapter 21 of the Listing Rules would not be an eligible de-SPAC target. ¹⁷	Adopted.	There are no restrictions on the types of companies that may be de-SPAC targets, as long as the target meets the relevant new listing requirements
Listing Requirements	The Successor Company will need to meet all new listing requirements, including IPO sponsor engagement to conduct due diligence, minimum market capitalization requirements, and financial eligibility tests, as well as all applicable rules regarding notifiable transactions and reverse takeovers. ¹⁸	Adopted	The NYSE requires that the Successor Company meet the minimum share price, market capitalization, and the public float requirements. Full initial listing requirements are applied if the de-SPAC transaction is determined to be a back-door listing. For Nasdaq, the Successor Company must meet the full initial listing requirements applicable to its market segment. Nevertheless, the SEC review process for the de-SPAC transaction is faster than that for a traditional IPO.
Shareholder Vote on de-SPAC Transaction	A de-SPAC transaction requires approval by the SPAC’s shareholders at a general meeting. Such shareholders exclude the SPAC promoter and associates, and any other shareholder and associates with a material interest in the transaction. ¹⁹	Adopted, except that an outgoing shareholder and its close associates would be permitted to vote in favour of a de-SPAC transaction if such a controlling shareholder would cease to be a controlling shareholder solely as a consequence of dilution to its shareholding through the issue of new shares to the incoming controlling shareholder resulting from the de-SPAC transaction. ²⁰	SPAC promoters are generally allowed to vote in the United States.

16. Rule 18B.69, IV-21; para 423, p. 75.

17. Rule 18B.38, IV-15; para 202, p.38.

18. Rule 18B.35, IV-15; para 201, p.38.

19. Rule 18B.53, IV-18; para 305, p.55.

20. Rule 18B.59, IV-19; para 306, p.56

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Redemption Option	SPAC investors have the right to redeem their shares irrespective of how they cast their vote on the de-SPAC transaction.	The HKEX removed the original proposal that only SPAC shareholders who vote against the de-SPAC transaction can redeem their shares.	Same as the adopted Hong Kong SPAC Regime.
Where a de-SPAC Transaction Fails	<p>The HKEX will suspend a SPAC's listing if it fails to meet either the de-SPAC Announcement Deadline or the de-SPAC Transaction Deadline.</p> <p>The SPAC must, within one month of such suspension, return to its shareholders (excluding holders of the promoter shares), on a pro rata basis, 100% of the funds it raised at its initial offering at a price not less than the price at which its shares were issued.²¹ The SPAC must liquidate thereafter.</p>	Adopted, and the HKEX has the discretion not to impose a suspension based on the individual circumstances of a case. ²²	Same as the adopted Hong Kong SPAC Regime.

²¹. Rule 18B.32, IV-13.

²². Rule 18B.73, IV-21; para 430, p. 76.



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